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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.606 OF 1994

1. Franco-Indian Pharmaceuticals)
Ltd., a company incorporated)
under the Companies Act, 1956,)
and having its registered)
office at Dr. E. Moses Road,)
Bombay - 400 011.)

2. Dominic D'Mello,Indian Citizen)
a Shareholder of Franco Indian)
Pharmaceuticals Ltd., having)
his place of work at Dr. E.)
Moses Road, Worli, Bombay-11.) ... Petitioners

Vs.

1. State of Maharashtra)
having its administrative)
offices at Mantralaya, Bombay)
- 400 032.

2. Franco-Indian Employees Union)
a trade union, having its)
office at 20, Dr.E.Moses Road,)
Bombay - 400 011.) ... Respondents

Ms. Deepa Chauhan i/b M/s. Little & Co. for the petitioners.

Ms. S.M. Dandekar, A.G.P. for the respondents.

CORAM: SMT. RANJANA DESAI &
ABHAY S. OKA, JJ.

DATED: 15TH DECEMBER 2005.

ORAL JUDGMENT:- (Per Smt. Ranjana Desai, J.)

1. Petitioner 1 is a company incorporated under the Companies Act, 1956 and carries on business of manufacturing diverse pharmaceutical preparations. Petitioner 2 is a shareholder of petitioner 1. Respondent 1 is the State of Maharashtra. Respondent 2 is the trade union representing the employees of petitioner 1.

2. In this petition, the petitioners have challenged the decision of the Divisional Officer of Department of Industry, Energy and Labour dated 30/12/1993. The petitioners have prayed that the said decision be cancelled. The petitioners have also prayed that the State Government be directed to grant exemption to the petitioners retrospectively from 1/1/1991 under section 13 of the Maharashtra Workmen's Minimum House Rent Allowance Act, 1983 (for short, "the said Act").

3. Section 13 of the said Act empowers the State Government to grant exemption to any specified factory or establishment or to any specified class of factories or establishments in any industry from the provisions of the said Act, in special cases. Section 13 of the said Act reads thus:

> "**13. Power to exempt in special cases. -** (1) Notwithstanding anything contained in this Act, the State Government may, by order published in the Official Gazette, and subject to such condition and restrictions, if any, and for such period or periods, as may be specified in the order, direct that the provisions of this Act shall not apply to any specified factory or establishment or to any specified class or factories or

establishments in any industry, if it is satisfied that it is just and proper so to do in the public interest or for any special reasons having regard to the more favourable conditions of employment in such factory or factories or establishment or establishments or to the financial position and other relevant circumstances of such factory or factories or establishments, as the case may be.

(2) Any order made under this section may be made so as to be retrospective to any date not earlier than the date on which the Act became applicable to that factory or factories or establishment or establishments, as the case may be."

4. On 9/4/1991, the petitioners applied under section 13 of the said Act to respondent 1 for exemption. Respondent 1 requested the petitioners to submit certain information in a prescribed proforma in connection with the exemption application. According to the petitioners, they furnished the said information in the prescribed proforma on 17/7/1991. Thereafter, the petitioners did not hear anything from the respondents. It appears that on 9/10/1992, a notification was issued under section 13 of the said Act imposing ceiling on the quantum of house rent allowance payable under the said Act. Admittedly,

this court quashed the said notification as being ultra vires section 13 of the said Act. This court, however, clarified that respondent 1 was free to consider afresh, the representations made so far or that may be made in future and to issue appropriate notification in accordance with law, in future.

5. Thereafter, the petitioners again sent a letter dated 11/3/1993 reiterating their request for exemption under section 13 of the said Act. A reply was sent by the respondents stating that the question of amending the said Act was under the consideration of the State Government and, hence, the petitioners' application could not be considered, at this stage. Thereafter, the petitioners filed a petition in this court being Writ Petition No.1363 of 1993 challenging the provisions of the said Act and praying for a direction to the State Government to grant exemption to petitioner 1 under section 13 of the said Act. On 19/7/1993, the said writ petition was disposed of in terms of the minutes of order and respondent 1 was directed to dispose of the petitioners' application for exemption within a period of eight weeks from the date of the said order.

6. It appears that pursuant to the said order, petitioner 1 was granted a hearing. By order dated 9/9/1993, petitioner 1 was informed that the exemption cannot be granted to the petitioners on the ground that taking into consideration the points mentioned in the

Government policy decision dated 9/10/1992, the petitioners had not made out any case or furnished any new points. The petitioners, thereafter, preferred another writ petition in this court being Writ Petition No.2030 of 1993. That petition was disposed of on 8/11/1993 by this court by observing that while considering the petitioners' exemption application, the only reason recorded in paragraph 3 of the order is that the application of the petitioner is not maintainable in view of the policy decision of the Government of Maharashtra dated 9/10/1992. It was further observed that this policy decision has been struck down by this court and special leave petition from that order has also been dismissed. It was further observed that there was a clear non application of mind on the part of the respondents to the pending exemption application which has to be decided in the light of section 13(1) of the said Act. This court, therefore, directed the respondents to consider afresh the exemption application of the petitioners dated 9/4/1991 in the light of the provisions of section 13 of the said Act after giving notice to respondent 2 union in accordance with law within eight weeks from the date of the said order.

7. The matter was, thereafter, considered afresh by the State Government. The petitioners submitted a further communication to the State Government by their letter dated 28/12/1993. Along with the said letter, petitioner 1 supplied detailed data of wages and other requisites

in respect of 348 establishments in six industries obtained from the Employers' Federation of India. A hearing was granted to the petitioners on 27/12/1993. It appears that during the hearing, in view of the doubt raised by respondent 2, a further communication dated 30/12/1993 was submitted by the petitioners. By the impugned order dated 30/12/1993, the petitioners' request was rejected. The Deputy Secretary noted his conclusion in paragraph 7 of the impugned order. The relevant portion of the said paragraph reads thus:

> "(i) The management have already agreed that their request for grant of exemption under section 13 of the Maharashtra Workmen's Minimum House Rent Allowance Act, 1983 is not covered by the criteria of public interest.
>
> (ii) The working conditions in the factory are not more favourable.
>
> (iii) The management have not substantiated their say about the critical financial position nor did they press for this point at the time of hearing.
>
> (iv) Special reasons have not been given to prove more favourable conditions of employment or critical financial position

or any other relevant circumstances."

8. We have heard the learned counsel for the parties. Ms. Chauhan, the learned counsel for the petitioners contended that though the petitioners had supplied the relevant data, the said data was not considered by respondent 1 while rejecting the petitioners' application. She submitted that, in fact, the petitioners' application was not considered in the light of this court's order dated 8/9/1993. She submitted that there is nothing to indicate on what basis respondent 1 has drawn the conclusion stated in paragraph 7. In the circumstances, the learned counsel urged that the impugned order may be set aside and respondent 1 may be directed to reconsider the application of the petitioners.

9. We find substance in this submission of the learned counsel. Relevant portion of paragraph 7 quoted hereinabove indicates that the management has admitted that their request for grant of exemption is not governed by the criteria of public interest. If that is so, as per section 13 of the said Act, respondent 1 will still have to consider whether there are any special reasons to grant exemption to the petitioners' factory such as favourable conditions of employment in the petitioners' factory or financial condition of the petitioners' factory. Existence of any other relevant circumstances may also have to be considered. Conclusions (ii), (iii)

and (iv) found in paragraph 7 are not supported by any reasons. There is no discussion as to how these conclusions are arrived at. We find that the petitioners have supplied material/data to respondent 1 but the impugned order does not indicate that this material/data was considered. If the material was considered then, there has to be some analysis of the material/data and respondent 1 must say why that material/data is not acceptable. The learned counsel for the petitioners has drawn our attention to the letter dated 11/3/1993 addressed by the petitioners to the Secretary to the Government of Maharashtra. She has also taken us to another letter dated 28/12/1993. The data has been annexed to this letter. In our opinion, it was necessary for the Deputy Secretary to consider the said material/data and then pass the order and if he had, in fact, considered the material/data, the order must reflect the said consideration. We, therefore, feel that it is necessary to set aside the impugned order and remand the matter to the Deputy Secretary, State of Maharashtra to pass appropriate orders after taking into consideration the material/data, which is furnished by the petitioners. Hence, we pass the following order:

O R D E R

10. The impugned order dated 30/12/1993 is quashed and set aside. The Deputy Secretary (Labour), Department of Industry, Energy and Labour, Government of Maharashtra,

is directed to consider the exemption application of the petitioners along with the letters dated 11/3/1993 and 28/12/1993 and the material/data submitted by the petitioners. The petitioners may submit any additional material/data which has relevance to the petitioners' application. The Deputy Secretary is directed to give personal hearing to the petitioners. Since the consideration of the exemption application is already delayed, the Deputy Secretary is directed to dispose it of within a period of six months from today. We wish to make it clear that we have not expressed any opinion on the merits of the case. The petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)

(ABHAY S. OKA, J.)